



COMMONWEALTH OF MASSACHUSETTS DEPARTMENT OF TELECOMMUNICATIONS AND CABLE

D.T.C. 11-AR-A

June 3, 2013

Investigation by the Department of Telecommunications and Cable on its own motion, pursuant to G. L. c. 159, §§ 12, 32, and 39, and G. L. c. 166, §§ 11 and 12, regarding the failure by individually-named common carriers of telecommunications services to file annual returns for calendar years 2005, 2006, 2007, 2008, and/or 2009.

FINAL ORDER

In the Matter of:

Coleman Enterprises, Inc.	2008	11-AR-1
Dynalink Communications, Inc.	2008	11-AR-2
QX Telecom, LLC	2008	11-AR-3
Touchtone Communications, Inc.	2008	11-AR-4
Global NAPs, Inc.	2005, 2006, 2007	11-AR-124
Dial-Around Telecom, Inc.	2005, 2007, 2008, 2009	11-AR-125
Global Touch Telecom, Inc.	2005, 2008, 2009	11-AR-126
Flower Vending Co., Inc.	2006, 2007, 2009	11-AR-127
Advanced Tel, Inc.	2006, 2008, 2009	11-AR-128
USD CLEC, Inc.	2006, 2008, 2009	11-AR-129

I. INTRODUCTION

In this Order, the Department of Telecommunications and Cable (“Department”) dismisses the proceedings against six of the above-captioned telecommunications carriers and fines the remaining four carriers (collectively, the “Ten Carriers”).¹ The Department also cancels the Statement of Business Operations (“SBO”) and all intrastate tariffs of each of the Ten Carriers for failure to file annual returns with the Department. As a result, none of the Ten Carriers will have the legal authority to provide telecommunications services in Massachusetts. Any of the Ten Carriers seeking authority to offer telecommunications services in Massachusetts in the future must: (1) contact the Department; (2) file the missing annual return(s) and filing fee(s); (3) file a new SBO and intrastate tariff(s); and (4) if applicable, pay statutory forfeitures.

Each carrier that is the subject of this Order is a registered carrier with the Department and is therefore required to file an annual return with the Department. G. L. c. 159, § 32; G. L. c. 166, § 11. According to the Department’s records, the following carriers failed to file annual returns for calendar years 2005, 2006, 2007, 2008, and/or 2009: Coleman Enterprises, Inc. (“Coleman”), 11-AR-1; Dynalink Communications, Inc. (“Dynalink”), 11-AR-2; QX Telecom, LLC (“QX”), 11-AR-3; Touchtone Communications, Inc. (“Touchtone”), 11-AR-4; Global NAPs, Inc. (“Global NAPs”), 11-AR-124; Dial-Around Telecom, Inc. (“Dial-Around”), 11-AR-125; Global Touch Telecom, Inc. (“Global Touch”), 11-AR-126; Flower Vending Co., Inc. (“Flower”), 11-AR-127; Advanced Tel, Inc. (“Advanced”), 11-AR-128; and USD CLEC, Inc. (“USD”), 11-AR-129.² Each of the Ten Carriers failed to file an annual return with the Department for at least one year, but then filed at least one annual return with the Department in

¹ For administrative ease and to better address the individual characteristics of each investigation, the Department today issues three final orders through generic docket number D.T.C. 11-AR.

² Although this Order pertains to several investigations into the failure to file annual returns with similar facts, the dockets are not consolidated, and thus the findings of fact and directives issued in this Order are applicable to each carrier, individually.

a subsequent year. The Department includes each of the Ten Carriers in this Order because of this fact, which is also a threshold in determining which carriers were “doing business in the [C]ommonwealth” and may be subject to statutory forfeitures for its failure to file. G. L. c. 166, §§ 11, 12. The Department deems this fact, by itself, to be insufficient to impose statutory forfeitures and discusses other relevant considerations below. The Department assesses full statutory forfeitures, starting from the first date of delinquency, on carriers for which there is sufficient evidence of “doing business in the [C]ommonwealth.” G. L. c. 166, §§ 11, 12. The Department refers collection of these forfeitures to the Attorney General for enforcement, per G. L. c. 159, § 39. Further, the Department cancels the SBOs and intrastate tariff(s) of each of the Ten Carriers.

II. PROCEDURAL HISTORY

On December 2, 2011, the Department opened investigations into each of the 129 carriers that failed to file annual returns for calendar years 2005, 2006, 2007, 2008, and/or 2009, including the Ten Carriers. *Investigation by the Dep’t of Telecomms. & Cable on its own motion, pursuant to G. L. c. 159, §§ 12, 32, 39, & G. L. c. 166, §§ 11, 12, regarding the failure by individually-named common carriers of telecomms. servs. to file annual returns for calendar years 2005, 2006, 2007, 2008, and/or 2009*, D.T.C. 11-AR, Order at 1, 7 (Dec. 2, 2011) (“*Order Opening Investigation*”). On the same day, the Department served notice of the investigations by certified mail to the last known address on file with the Department for each of the 129 carriers. *Annual Returns*, D.T.C. 11-AR, *Notice of Investigation and Hr’g at 1* (Dec. 2, 2011) (“*Notice*”). The Department published a copy of the *Notice* in the *Boston Globe* on February 14, 2012. The *Notice* directed each carrier to state in writing, before February 10, 2012:

1. Whether the company filed the annual return for the relevant calendar year(s).
If so, to provide a copy of the annual return(s) and documentation of the

- filing(s). If not, to explain why, and to state whether the failure to file was reasonable.
2. Whether the company provided telecommunications services within the Commonwealth during the relevant calendar year(s).
 3. If applicable, whether the Secretary of the Commonwealth reinstated the company's authority to do business within the Commonwealth.
 4. If applicable, to provide the current company address and contact information and to provide an amended tariff and Statement of Business Operations reflecting that change.

Order Opening Investigation at 5-6; *Notice* at 1. The Department subsequently dismissed the investigations of eleven carriers that responded to the *Notice* and corrected their delinquencies.³

The Department held individual public and evidentiary hearings for each of the Ten Carriers on February 28, 2012. Neither any members of the public nor any of the Ten Carriers appeared at the hearing.

During each evidentiary hearing, the Department marked several exhibits for identification and inclusion in the record, including copies of: (1) the SBO and tariff cover pages on file with the Department for the carrier at issue in the hearing; (2) registration information on file or posted with the Secretary of the Commonwealth ("SOC") of Massachusetts for that carrier; (3) the carrier's Federal Communications Commission ("FCC") Form 499 filer identification information; (4) all notices issued by the Department reminding the carrier of its obligation to file annual returns for the relevant calendar year(s); (5) all extensions issued by the Department for delinquent annual returns; (6) signed certified receipt cards attached to the Department's *Notice* mailing or copies of any returned "Undeliverable" mailing; (7) annual

³ Memo. of Dismissal from the Dep't to Birch Commc'n, Inc., Grasshopper Group, LLC, TVC Albany, Inc., Camp Overflow, LLC, and Sprint Spectrum, L.P. (Feb. 21, 2012); Memo. of Dismissal from the Dep't to SNET Diversified Group, Inc. (Feb. 23, 2012); Memo. of Dismissal from the Dep't to Saturn Telecomm. Servs., Inc. (Dec. 19, 2012); Memo. of Dismissal from the Dep't to Sunesys, LLC, CornerStone Tel. Co., LLC, and Magellan Hill Techs., LLC (Feb. 22, 2013); Memo. of Dismissal from the Dep't to Airnex Communications, Inc. (Mar. 7, 2013).

returns filed with the Department by the carrier for years subsequent to the delinquent annual returns; and (8) additional relevant information on file with or collected by the Department.⁴

The Department provided numerous opportunities and reminders for each of the Ten Carriers to comply with the annual returns filing requirement. The Department issued courtesy notices reminding them of their obligation to file annual returns by the March 31 deadline for each year in question.⁵ *Order Opening Investigation* at 4. Further, prior to opening these investigations, and in an effort to obtain compliance and avoid enforcement proceedings, the Department granted multiple extensions past the March 31 annual deadline for all delinquent 2005, 2006, 2007, 2008, and/or 2009 annual returns. *Id.* The Department notified each delinquent carrier by mail of the extended filing deadlines for each year.

The year(s) of delinquency for each of the Ten Carriers are as follows:

Carrier	Docket #	Year(s) of Delinquency	Year(s) Filed
Coleman Enterprises, Inc.	11-AR-1	2008	2009
Dynalink Communications, Inc.	11-AR-2	2008	2009
QX Telecom, LLC	11-AR-3	2008	2009
Touchtone Communications, Inc.	11-AR-4	2008	2009
Global NAPs, Inc.	11-AR-124	2005, 2006, 2007	2008, 2009
Dial-Around Telecom, Inc.	11-AR-125	2005, 2007, 2008, 2009	2006
Global Touch Telecom, Inc.	11-AR-126	2005, 2008, 2009	2006, 2007
Flower Vending Co., Inc.	11-AR-127	2006, 2007, 2009	2008

⁴ The additional information includes e-mail correspondence between Department staff and carriers; e-mail delivery failure notices; and telecommunications database registration printouts in lieu of SBOs.

⁵ For the 2005 annual returns, the Department mailed a reminder notice to carriers on February 24, 2006; for the 2006 annual returns, the Department mailed a reminder notice to carriers on March 9, 2007; for the 2007 annual returns, the Department mailed a reminder notice to carriers on March 7, 2008; for the 2008 annual returns, the Department mailed a reminder notice to carriers on February 10, 2009; and for the 2009 annual returns, the Department mailed a reminder notice to carriers on March 12, 2010.

Advanced Tel, Inc.	11-AR-128	2006, 2008, 2009	2007
USD CLEC, Inc.	11-AR-129	2006, 2008, 2009	2007

III. ANALYSIS AND FINDINGS

A carrier must register with the Department in order to provide telecommunications services in Massachusetts. *See Regulatory treatment of telecomms. common carriers within Mass.*, D.P.U. 93-98, Order at 12 (May 11, 1994) (“*Common Carrier Regulatory Treatment Order*”). The registration process consists of filing an SBO and an intrastate tariff with the Department. *Id.* Registration is complete upon the Department’s approval of the intrastate tariff. *Id.* Every registered carrier avers that it has the managerial, technical, operational, and financial ability to comply with statutory requirements, and the Department gives registered carriers a presumption of capability unless it specifically finds otherwise. *Investigation by the Dep’t of Telecomms. & Energy on its own motion, pursuant to G. L. c. 159, §§ 12, 32, 39 & G. L. c. 166, §§ 11, 12, regarding the failure by several individually named common carriers of telecomms. servs. to file their annual returns for year 2001 by Mar. 31, 2002, & their annual returns for year 2002 by Mar. 31, 2003, & to pay statutory forfeitures*, D.T.E. 03-76-A, Order at 5 (Aug. 20, 2004) (“*D.T.E. 03-76-A*”).

Specifically:

Any common carrier that has an approved tariff on file with the Department, and that has submitted a Statement of Business Operations, will be considered a “registered” common carrier in the Department’s new framework. Registered common carriers will be subject to the Department’s general supervisory authority, including specific requirements in G.L. c. 159, and the Department’s regulatory policies as articulated in Department Orders.⁶

⁶ In its *Common Carrier Regulatory Treatment Order*, the Department eliminated the requirement that carriers, excluding payphone providers, obtain a certificate of public convenience and necessity from the Department before offering service within the Commonwealth. *See Common Carrier Regulatory Treatment Order* at 12.

Common Carrier Regulatory Treatment Order at 12.

The Commonwealth imposes a requirement that registered carriers file annual returns pursuant to G. L. c. 159, § 32 and G. L. c. 166, § 11. Both statutes require registered carriers to file annual returns, but only one, G. L. c. 166, § 11, directs the Department to assess a financial penalty for failure to comply with filing requirements.

Under G. L. c. 159, § 32, *all* carriers have a duty to file an annual return for each calendar year by March 31 of the following year, or at a later date fixed for good cause, in a format prescribed by the Department. That is, a carrier must file an annual return regardless of whether it is doing business in the Commonwealth. In the event a carrier fails to comply with G. L. c. 159, § 32, the Department shall refer the matter to the Attorney General for enforcement. G. L. c. 159, § 39.

In contrast, under G. L. c. 166, § 11, only carriers “doing business in the [C]ommonwealth” have a duty to file an annual return for each calendar year by March 31 of the following year, or at a later date fixed for good cause, in a format prescribed by the Department. Any carrier neglecting to file the annual return required by G. L. c. 166, § 11 shall forfeit to the Commonwealth \$5.00 per day for the first fifteen days of delinquency, \$10.00 per day for the next fifteen days, and a sum not exceeding \$15.00 per day for each day thereafter until the annual return is filed. G. L. c. 166, § 12. Further, if the Department determines that a carrier “unreasonably refuses or neglects to make such return,” the carrier shall forfeit up to \$500.00 for each offence, as an additional penalty. *Id.* The filing fee for each annual return is \$5.00 and is included in the amount due.⁷ In addition to these fines, the Department shall refer a failure to comply with G. L. c. 166, § 11 to the Attorney General for enforcement. G. L. c. 159, § 39.

⁷ See General Information & Filing Instructions Annual Return and Revenue Statement IPP Revenue Statement available at <http://www.mass.gov/ocabr/docs/dtc/telecom/forms/cklist4annualreturn2010.pdf>

As to the Ten Carriers, the issue is whether they were “doing business” in the Commonwealth, and therefore subject to the annual return filing requirement and associated financial penalties of G. L. c. 166, §§ 11,12 for their failure to comply. Although G. L. c. 166 is silent as to what constitutes doing business, the Department of Revenue’s (“DOR”) definition of doing business is well-settled and serves as a reasonable guide to the Department on the issue. *See, e.g., Alcoa Bldg. Prods., Inc. v. Comm’r Of Revenue*, 797 N.E.2d 357, 364 (Mass. 2003) (foreign corporation whose sales managers processed warranty claims in Massachusetts was doing business in Massachusetts); *Aloha Freightways, Inc. v. Comm’r of Revenue*, 701 N.E.2d 961, 966 (Mass. 1998) (foreign corporation whose trucks made dozens of trips to Massachusetts, served customers in Massachusetts, and drove thousands of miles on Massachusetts roads, was doing business in Massachusetts); 830 C.M.R. § 63.39.1. The DOR’s definition of doing business includes: the buying, selling or procuring of services or property; the execution of contracts; the exercise or enforcement of contract rights; the maintenance of a place of business; the employment of labor; and each and every other act, power, right, privilege, or immunity exercised or enjoyed in the Commonwealth as an incident to or by virtue of the powers and privileges acquired through corporate form. *See, e.g., Truck Renting & Ass’n v. Comm’r of Revenue*, 746 N.E.2d 143, 737 (Mass. 2001) (foreign corporation leasing vehicles to persons operating such vehicles in Massachusetts was subject to taxation); 830 C.M.R. § 63.39.1; M.T.G. LR 99-5 (Feb. 3, 1999) (foreign corporation’s act of holding of leases and plans to sublet in Massachusetts constituted doing business under 830 C.M.R. § 63.39.1(4)(b) because it was considered to be procuring property, involved entering into contracts, and possibly involved enforcing those contracts in Massachusetts courts). This list is not exhaustive. Indeed, as discussed below, a carrier’s registration status with the SOC and its own admission to the FCC

may also inform the Department on the likelihood of the carrier doing business in the Commonwealth. Any one indicium in the above list, however, is generally sufficient for the Department to find that a carrier is doing business in the Commonwealth. *See, e.g., Geoffrey, Inc. v. Comm'r of Revenue*, 899 N.E.2d 87, 88-89 (Mass. 2009) (foreign corporation which licensed trademarks in Massachusetts in return for royalties was doing business in Massachusetts); 830 C.M.R. § 63.39.1. *See contra* M.T.G. LR 05-8 (Nov. 21, 2005) (foreign corporation was not considered to be doing business in Massachusetts because the acts of an independent contractor engaging in the items listed in 830 C.M.R. § 63.39.1(4)(b) are not imputed to the foreign corporation).

A. Carriers Doing Business

Applying the DOR's definition of doing business, the Department finds that, for the reasons stated below, Coleman; Dial-Around; Global Touch; Flower; Advanced; and USD are not doing business in the Commonwealth and therefore are not subject to the financial penalties of G. L. c. 166, §§ 11,12. However, Dynalink; QX; Touchtone; and Global NAPs are, or until recently were, doing business in the Commonwealth and are therefore subject to financial penalties. *Id.*

In the cases of Coleman, Dial-Around, Global Touch, Flower, Advanced, and USD, there is simply insufficient evidence that they are still doing business in the Commonwealth. The Department initially included these six registered carriers in this Order because they failed to file an annual return with the Department for at least one year, but then filed at least one annual return in a subsequent year. *Investigation by the Dep't of Telecomms. & Cable on its own motion, pursuant to G. L. c. 159, §§ 12, 32, 39, & G. L. c. 166, §§ 11, 12, regarding the failure by individually-named common carriers of telecomms. servs. to file annual returns for calendar*

years 2005, 2006, 2007, 2008, and/or 2009, D.T.C. 11-AR-1 at Ex. 9, D.T.C. 11-AR-125 at Ex. 7, D.T.C. 11-AR-126 at Ex. 7A-7B, 11-AR-127 at Ex. 6, D.T.C. 11-AR-128 at Ex. 7, D.T.C. 11-AR-129 at Ex. 7.⁸ However, none of these six carriers are currently registered with the SOC to do business in the Commonwealth.⁹ Although the Department also considers other indicia of doing business, in this instance, the fact that these six carriers are no longer registered with the SOC distinguishes them from the four carriers who are being fined.

As for Dynalink, QX, Touchtone, and Global NAPs, each of these carriers is still registered with the SOC.¹⁰ 11-AR-2, Ex. 4; 11-AR-3, Ex. 4; 11-AR-4, Ex. 4; 11-AR-124, Ex. 2. These four carriers' current registrations with the SOC coupled with the fact that they intermittently filed annual returns is sufficient for the Department to find that they are, or until recently were, doing business in the Commonwealth.¹¹

A carrier's own statement that it is doing business in Massachusetts is also relevant. Dynalink, Touchtone, and Global NAPs, each disclosed to the FCC, through a Form 499-A, that it was operating in Massachusetts, for some of the relevant years.¹² 11-AR-2 at Ex. 5; 11-AR-4

⁸ Citations to individual exhibits in the record pertaining to a specific docket in this Order shall be cited as "[Docket No.], Ex. [Exhibit No.]".

⁹ The SOC's registrations for Coleman, Global Touch, Advanced, and USD were involuntarily revoked on June 18, 2012. Dial-Around's registration was revoked on March 31, 2008. The summary available for Flower on the SOC's corporate database states that it was involuntarily dissolved by court order or by the SOC on May 31, 2007. The Department acquires this information from the SOC's corporate database at: <http://corp.sec.state.ma.us/corp/corptest/corptestinput.asp> (last visited Nov. 30, 2012).

¹⁰ *Id.*

¹¹ Foreign limited liability companies doing business in the Commonwealth must register with the SOC, file annual reports, and pay an annual filing fee. G. L. c. 156C, § 48. The SOC may revoke the authority of a foreign limited liability company to transact business in the Commonwealth if such a company fails to file annual reports for two consecutive years. G. L. c. 156C, § 72. Similarly, foreign corporations transacting business in the Commonwealth must file a registration certificate with the SOC. G. L. c. 156D, § 15.01. A foreign corporation that has filed with the SOC may only withdraw from the Commonwealth after submitting an application to the SOC stating that it is no longer transacting business in the Commonwealth. G. L. c. 156D, § 15.20. The SOC may also revoke the authority of a foreign corporation to transact business in the Commonwealth if it has failed to file annual reports, or failed to file or pay taxes for two consecutive years. G. L. c. 156D, § 15.30.

¹² The FCC requires all telecommunications providers to file a FCC Form 499-A, through the Universal Service Administrative Company ("USAC"), annually by April 1, with limited exception. *See* FCC, 2012

at Ex. 5; 11-AR-124 at Ex. 3. According to Dynalink and Touchtone, each carrier provided telecommunications services in Massachusetts with registrations current as of April 1, 2011.¹³

Pursuant to the FCC's instructions for its Form 499-A, carriers must identify jurisdictions in which they provided telecommunications services in the past fifteen months and expect to provide telecommunications services in the next twelve months. *See* FCC, 2012

Telecommunications Reporting Worksheet Instructions (FCC Form 499-A) at 12. Therefore, this evidence suggests that these two carriers were "doing business in the [C]ommonwealth" at least in 2010 and 2011. Global NAPs also listed Massachusetts as a jurisdiction in which it provided telecommunications service, with a registration current as of April 3, 2006.¹⁴ This evidence suggests that Global NAPs was doing "doing business in the [C]ommonwealth" at least in 2005 and 2006. Global NAPs' correspondence with the Department stating that it ended operations in Massachusetts as of February 29, 2012, is additional evidence that it was doing business in the Commonwealth up to the date it is being fined.¹⁵

Telecommunications Reporting Worksheet Instructions (FCC Form 499-A) at 2, *available at* <http://transition.fcc.gov/Forms/Form499-A/499a-2012.pdf>. Carriers report revenues on a FCC Form 499-A, which USAC then uses to determine federal contribution amounts for telecommunications relay service, universal service, numbering administration, and local number portability support mechanisms. *Id.* The FCC reports submitted information on its FCC Form 499 Filer Database at

¹³ <http://fjallfoss.fcc.gov/cgb/form499/499a.cfm>. The Department notes that because FCC Form 499 filer identification information is not provided for QX, this component could not be considered for this carrier. The FCC Form 499 filer identification information for both of these carriers, in the relevant exhibits to the Department's investigation, was retrieved from the FCC Form 499 filer database on January 19, 2012, when the database reflected filings received by USAC as of January 6, 2012.

¹⁴ The FCC Form 499 filer identification information for Global NAPs, in the relevant exhibit to the Department's investigation, was retrieved from the FCC Form 499 filer database on January 26, 2012, when the database reflected filings received by USAC as of January 6, 2012.

¹⁵ Although Global NAPs is currently registered with the SOC, the Department has multiple pieces of evidence that the carrier ceased operations in Massachusetts as of February 29, 2012:

1. Email from Brent Struthers, Senior Policy Advisor, Neustar, Inc., to Department staff (Oct. 1, 2012, 1:44 PM) (seeking approval to reclaim abandoned Central Office Codes ("codes") that were assigned to Global NAPs through the North American Numbering Plan Administration ("NANPA")).
2. Telephone call from Department staff, to Lawrence Cross, Paralegal, Global NAPs (Oct. 3, 2012) (confirming that Global NAPs ceased operations in Massachusetts).
3. Email from Department staff, to Brent Struthers, Senior Policy Advisor, Neustar, Inc. (Oct 3, 2012, 2:42 PM) (permitting Neustar, Inc. to reclaim codes from Global NAPs through NANPA).
4. Email from Department staff, to Lawrence Cross, Paralegal, Global NAPs (Oct. 3, 2012, 02:09 PM) (directing Global NAPs to file a Certificate of Withdrawal to officially exit the Massachusetts market).

Having established that Dynalink, QX, Touchtone, and Global NAPs are or were doing business for purposes of G. L. c. 166, §§ 11, 12, the Department must next consider whether each of these four carriers' refusal or neglect to file was unreasonable. G. L. c. 166, § 12. None of these carriers have provided justification for their failure to file annual returns. Indeed, they have failed to respond to the Department's courtesy notices reminding carriers to file annual returns by the March 31 due date and to the Department's extensions of the filing deadlines without penalty. Moreover, they failed to respond to the *Notice* and failed to appear at the public and evidentiary hearings. Although the Department is not required to provide reminders to carriers of their reporting requirements, these four carriers' failure to respond compounds their neglect of reporting obligations. Accordingly, the Department finds that the failure on the part of these four carriers to file annual returns is unreasonable and that the \$500.00 forfeiture payable to the Commonwealth pursuant to G. L. c. 166, § 12 will apply to each of them for each year of delinquency. *D.T.E. 03-76-A* at 5-6.

The Department concludes that the continuing daily forfeitures, accrued from April 1, 2009, the additional \$500.00 forfeitures as provided in G. L. c. 166, § 12, and the \$5.00 filing fees, are applicable to Dynalink, QX, and Touchtone's failures to file 2008 annual returns. *See D.T.E. 03-76-A* at 5-6; *See infra* Appendix A. Additionally, the Department concludes that the daily forfeitures accrued from April 1, 2006, April 1, 2007, and April 1, 2008, as well as an additional \$500.00 forfeiture for each year of delinquency as provided for in G. L. c. 166, § 12, and a \$5.00 filing fee for each year of delinquency, are applicable to Global NAPs' failure to file 2005, 2006, and 2007 annual returns. *See D.T.E. 03-76-A* at 5-6; *See infra* Appendix A.

5. Email from Donald H. C. Libbey, Attorney for Carl F. Jenkins, Receiver for Global NAPs to Department Staff (Dec. 5, 2012, 10:10 AM) (confirming that Global NAPs ceased operations in Massachusetts as of February 29, 2012).

Further, the Department directs Dynalink, QX, Touchtone, and Global NAPs to comply with the Department's Mass Migration Requirements. *Proc. by the Dep't of Telecomms. & Energy on its own Mot. to Develop Reqs. for Mass Migrations of Telecomms. Service End-Users*, D.T.E. 02-28, (Aug. 7, 2002). The Mass Migration Requirements apply to a Competitive Local Exchange Carrier ("CLEC") exiting the local exchange services market in order to facilitate the migration of customers to other carriers, without interruption of service. *Id.* at 1. CLECs exiting the Massachusetts market are required to file their exit plans with the Department ninety days in advance of discontinuing service, or upon a showing that ninety days notice is not feasible, at the earliest possible date. *Id.* at 8. The effective date of this Order shall be 120 days after the date of this Order to enable compliance with the Department's Mass Migration Requirements.¹⁶

B. Carrier Registrations

The Department may deem a carrier's failure to file an annual return as cause for cancellation of the carrier's SBO and intrastate tariff(s), thus preventing the carrier from operating and/or providing telecommunications services within the Commonwealth.¹⁷ *See Common Carrier Regulatory Treatment Order* at 12. Further, the Department may cancel the registration and "direct removal of public access line service from the payphones of any company" that fails to file its annual return and update its registration information. *Investigation by the Dep't of Telecomms. & Energy on its own motion, pursuant to G. L. c. 159, §§ 12, 32, 39*

¹⁶ The Department's Mass Migration Requirements are available at, <http://www.mass.gov/ocabr/government/oca-agencies/dtc-lp/competition-division/telecommunications-division/doing-business/market-exit/>.

¹⁷ The Department recently amended the requisite affidavits of these registration forms to include bold language that specifies the "[r]egistrant understands that failure to comply will be grounds for the Department to cancel the [r]egistrant's registration/SBO and tariff(s), thus preventing the [r]egistrant from operating and/or providing telecommunications services within Massachusetts." *Application for Registration for Telecommunications Service Providers Other Than Payphone Service Providers – Statement of Business Operations* at 8, available at <http://www.mass.gov/ocabr/government/oca-agencies/dtc-lp/competition-division/telecommunications-division/doing-business/applications-forms-doi/>; *Registering to Provide Pay Telephone Services in Massachusetts* at 8, available at <http://www.mass.gov/ocabr/government/oca-agencies/dtc-lp/competition-division/telecommunications-division/doing-business/applications-forms-doi/>.

& G. L. c. 166, §§ 11, 12, regarding the failure by several individually named common carriers of telecomms. servs. to file their annual returns for the year 2000 by Mar. 31, 2001, & to pay statutory forfeitures, D.T.E. 02-13-B, Order at 4 & n.3 (Sept. 20, 2002) (discussing payphone provider registrations, which state that “if the [r]egistrant is found not to be in compliance with the Department’s requirements, the Department may withdraw registration and remove public access line service from the [r]egistrant’s pay telephones”).

Each carrier subject to this Order was registered with the Department during the relevant calendar year(s) because each had an SBO and an approved intrastate tariff on file with the Department. *Common Carrier Regulatory Treatment Order* at 12. Each of the Ten Carriers failed to file annual returns for the years specified. Accordingly, the Department cancels the SBOs and intrastate tariff(s) on file with the Department for each of the Ten Carriers, thus preventing them from operating and/or providing telecommunications services within the Commonwealth. The Department also directs that public access line service be removed from the payphone(s) of Flower.

IV. ORDER

After notice, hearing, opportunity for comment, and due consideration, it is

ORDERED that the investigation relative to Coleman Enterprises, Inc. in D.T.C. 11-AR-1 is dismissed and the carrier’s SBO and all intrastate tariffs on file with the Department be canceled; and it is

FURTHER ORDERED that Dynalink Communications, Inc., QX Telecom, LLC, and Touchtone Communications, Inc., shall each immediately file an annual return for calendar year 2008, pay to the Commonwealth of Massachusetts the applicable statutory forfeitures consistent

with this Order, comply with the Department's Mass Migration Requirements, and that these carriers' SBOs and intrastate tariffs on file with the Department be canceled; and it is

FURTHER ORDERED that Global NAPs, Inc. shall immediately file an annual return for calendar years 2005, 2006, and 2007, pay to the Commonwealth of Massachusetts the applicable statutory forfeitures consistent with this Order, comply with the Department's Mass Migration Requirements, and that the carrier's SBO and all intrastate tariffs on file with the Department be canceled; and it is

FURTHER ORDERED that the investigation relative to Dial-Around Telecom, Inc. in D.T.C. 11-AR-125 is dismissed and the carrier's SBO and all intrastate tariffs on file with the Department be canceled; and it is

FURTHER ORDERED that the investigation relative to Global Touch Telecom, Inc. in D.T.C. 11-AR-126 is dismissed and the carrier's SBO and all intrastate tariffs on file with the Department be canceled; and it is

FURTHER ORDERED that the investigation relative to Flower Vending Co., Inc. in D.T.C. 11-AR-127 is dismissed, the carrier's SBO and all intrastate tariffs on file with the Department be canceled, and that public access line service be removed from its payphone(s); and it is

FURTHER ORDERED that the investigation relative to Advanced Tel, Inc. in D.T.C. 11-AR-128 is dismissed and the carrier's SBO and all intrastate tariffs on file with the Department be canceled; and it is

FURTHER ORDERED that the investigation relative to USD CLEC, Inc. in D.T.C. 11-AR-129 is dismissed and the carrier's SBO and all intrastate tariffs on file with the Department be canceled; and it is

FURTHER ORDERED that the findings reached herein are applicable to Dynalink Communications, Inc., individually, in docket D.T.C. 11-AR-2; and it is

FURTHER ORDERED that the findings reached herein are applicable to QX Telecom, LLC, individually, in docket D.T.C. 11-AR-3; and it is

FURTHER ORDERED that the findings reached herein are applicable to Touchtone Communications, Inc., individually, in docket D.T.C. 11-AR-4; and it is

FURTHER ORDERED that the findings reached herein are applicable to Global NAPs, Inc., individually, in docket D.T.C. 11-AR-124; and it is

FURTHER ORDERED that the findings of fact and directives herein involving carriers' delinquent annual returns shall be presented to the Attorney General of the Commonwealth of Massachusetts for action pursuant to G. L. c. 159, § 39; and it is

FURTHER ORDERED that the effective date of this Order shall be 120 days from the date of this Order to enable compliance with the Department's Mass Migration Requirements.

By Order of the Department,

Geoffrey G. Why, Commissioner

RIGHT OF APPEAL

Appeals of any final decision, order, or ruling of the Department of Telecommunications and Cable may be brought pursuant to applicable state and federal laws.

APPENDIX A

Carrier	Year(s) of Delinquency	2006	2007	2008	2009	2010	2011	2012	Total
Dynalink Communications, Inc.	2008	NA	NA	NA	\$4,405	\$5,475	\$5,475	\$5,490	\$20,845
QX Telecom, LLC	2008	NA	NA	NA	\$4,405	\$5,475	\$5,475	\$5,490	\$20,845
Touchtone Communications, Inc.	2008	NA	NA	NA	\$4,405	\$5,475	\$5,475	\$5,490	\$20,845
Global NAPs, Inc.	2005, 2006, 2007	\$4,405	\$9,880	\$15,385	\$16,425	\$16,425	\$16,425	\$2,700	\$81,645
Total for all 4 Carriers	NA	\$4,405	\$9,880	\$15,385	\$29,640	\$32,850	\$32,850	\$19,170	\$144,180